

requesting them to attend at his Chambers on June 25, 1983 for the purpose of an "inquiry" in order to question them in the presence of his solicitor about this incident concerning a matter in which he was personally involved and which related to the present suit was not proper as it reflected, in my view, an abuse of his official position. This sort of action should not have taken place and must not be repeated.

There now remains only the question of damages. Counsel for the plaintiff has for the Court's guidance referred to four cases, namely *John Tan Chor-Yong v. Lee Chay Tian*⁽¹⁾, *Hasnul bin Abdul Hadi v. Bulat bin Mohamed & Anor.*⁽²⁾, *John Lee & Anor. v. Henry Wong Jan Fook*⁽³⁾ and *C.S. Wu v. Wang Look Fung & Ors.*⁽⁴⁾ I have considered the occupations of the defamed parties concerned in these four cases and the amounts awarded to them. I have also considered the principles which should guide the Court as laid down in *Gatley on Libel and Slander, Seventh Edition, paragraph 1358*. Counsel for the plaintiff has indicated that he has instructions to leave the question of quantum entirely to the Court's discretion. I take the view that the plaintiff as a government servant drawing a regular salary should not benefit financially from these proceedings but is entitled to be vindicated in the eyes of the public and consoled for the wrong done to him. Having regard to all the circumstances of this particular case I am of the opinion that the sum of \$5,000/- would be a fair and adequate sum to be awarded as damages.

Accordingly I enter judgment for the plaintiff for \$5,000/- with costs.

Claim allowed.

Solicitors: *Malek & Joseph Au; Rithauddeen & Aziz*

A BRUNEI REPORT

PUBLIC PROSECUTOR v. CHONG ING CHU

[A.Cr. J. (Garcia J.) December 8, 1982]

B [Bandar Seri Begawan – Criminal Appeal No. 15 of 1982]

Criminal Law & Procedure – Theft – Charge of intention to commit theft – Possession without lawful excuse of house-breaking implements – Magistrate applied wrong standard – Penal Code, ss. 379 & 447 – Minor Offences Enactment (Cap. 30), s.24(e).

C The respondent was charged with entry upon property in the possession of another and with intent to commit an offence of theft, an offence punishable under sections 379 and 447 of the Penal Code. He was also charged for having in his possession without lawful excuse house-breaking implements, viz., one garden scoop, one Sonca torchlight, one set of multi-purpose lunch set and one bottle-opener fitted with knife and spike, under section 24(e) of the Minor Offences Enactment (Cap.30).

E The evidence against the respondent was that a witness first saw him walking back and forth, hanging around in the compound of a flat and at that time he was shining a torch at all the cars in the garage. The witness became suspicious after seeing this and so he approached the respondent. He found out the respondent's name and noticed that the respondent was carrying a knapsack on his back. He asked the respondent what he was doing there and the reply he received was that he was searching for a wedding ring which he had dropped the previous day whilst jogging in that area.

F The witness looked into the knapsack and found one baseball hat, one curtain, one garden scoop, a bicycle pump, a green cap, 2 pocket knives, one of which was a bottle-opener fitted with a knife and spike, and when he asked the respondent what he was doing with those articles at that time, the respondent gave no reply whatsoever.

G The learned Magistrate considered the items mentioned in the charge could not be used for the purpose of house-breaking and held that "a garden scoop, a multi-purpose lunch set, a bottle-opener fitted with knife and spike ... would not be able to do the job of opening a window or door and would not come under the ambit of house-breaking implements". He held that "a person would not attempt to commit theft at 5.15 a.m. in an open space. The accused used a torchlight. He could easily be detected by people around as he was by the Inspector. If he had the intention of committing theft from the car, the torchlight he should have used would have been a pencil torchlight not like the torchlight produced in Court". The Public Prosecutor appealed against the above decision.

I Held, allowing the appeal: a *prima facie* case has been made out against the respondent in respect of the first and second charges and accordingly he should have been asked by the Magistrate to answer the two charges.

Cases referred to:

(1) *R. v. Patterson* [1962] 1 All E.R. 340.

- (2) *R. v. Percival, Smith and Graham* (1905) 69 J.P. 320
 (3) *Haw Tua Tau v. Public Prosecutor* [1981] 2 M.L.J. 49.

CRIMINAL APPEAL.

James Chiew (Deputy Public Prosecutor) for the appellant.

Michael Lobo for the respondent.

Cur. Adv. Vult.

Garcia J.: This is an appeal by the Public Prosecutor against the verdict of the Magistrate in respect of 2 charges brought by the Public Prosecutor against the Respondent.

The first charge against the Respondent is as follows:

"That you on 25th day of June, 1982 at about 0515 hours at Jalan Ong Sum Ping, Bandar Seri Begawan, in the State of Brunei, did enter upon property in the possession of another, to wit, (Block 10, Jalan Ong Sum Ping) belonging to the Brunei Government, with intent to commit an offence of theft, an offence punishable under Section 379 of the Penal Code, and that you have thereby committed an offence punishable under section 447 of the Penal Code."

The second charge is:

"That you on the 25th day of June, 1982 at about 0515 hours at Jalan Ong Sum Ping, Bandar Seri Begawan, in the State of Brunei, did have in your possession without lawful excuse housebreaking implements, to wit, one garden scoop, one Sonca torchlight, one set of multi-purpose lunch set and one bottle-opener fitted with knife and spike, and you have thereby committed an offence punishable under section 24(e) of Minor Offences Enactment (Cap 30)."

The evidence adduced on behalf of the Prosecution comes from only one witness and that was from Probationary Inspector, A.K. Suffian b. Pg. Hj. Tuah. The evidence had been referred to by the Magistrate in his judgment and to state them briefly: at about 5.15 a.m. on that morning, the witness first saw the Respondent walking back and forth, hanging around in the compound of the flat known as Flat Block 10 and at that time he was shining a torch at all the cars in the garage. The witness became suspicious after seeing this and so he approached the Respondent, he found out his name and noticed that the Respondent was carrying a knapsack on his back. He asked the Respondent what he was doing there and the reply he received was that he was searching for a wedding ring which he had dropped the previous day whilst jogging in that area.

A The witness looked into the knapsack and found one baseball bat, one curtain, one garden scoop, a bicycle pump, a green cap, 2 pocket knives, one of which was a bottle-opener fitted with a knife and spike, and when he asked the Respondent what he was doing with those articles at that time, the Respondent gave no reply whatsoever.

The Magistrate in his judgment addressed himself to the first charge as follows:-

C "It is alleged that attempted theft took place at the crack of dawn - 5.15 in an open garage. I do not think that a person would attempt to commit theft at 5.15 in the morning in an open space. The accused used a torchlight. He could easily be detected by people around, as he was, by the Inspector. If he had the intention of committing theft from the car, the torchlight he should have used would have been a pencil torchlight not like the torchlight produced in Court."

E With respect, the Magistrate speculated on what actually happened that morning. It is not in accordance with the evidence. There was no attempt of theft. All the charge says was that he went there with an intent to steal. And what evidence is required to prove that particular intent? I think it is important to note firstly, the time in which the Respondent appeared at that particular place where there was a block of flats, he was found in the garage shining his torchlight into the cars. If his explanation that he was looking for a wedding ring were to be accepted the first question one would ask is why had he not looked for the ring when it was daylight and on the day that he had dropped it. It is surprising that a person who has dropped a wedding ring whilst jogging would not find it missing almost immediately after he dropped it.

H I would imagine a less likely circumstance than a person who has lost a ring whilst jogging would find it in some closed cars parked the next morning in a garage.

I He was first seen by the Inspector to be walking to and fro. This particular circumstance is not mentioned in the judgment of the learned Magistrate nor is it mentioned here today. But certainly that weighs very heavily when considering whether the Respondent's explanation was acceptable and whether his actions on that time of the morning in that garage were innocent.

I think that articles he had in his possession should also be taken into consideration consider-

ing Respondent's intention at the time when he was found in the garage of this block of flats. Certainly, from those facts which went largely unchallenged when the Inspector was cross-examined, the Magistrate should under that particular section call upon the Respondent for an explanation of his conduct.

In my view, the Magistrate was no doubt influenced by the evidence given by the witness that the Respondent acted in "a fantasy mood and walking about as if he were drunk." This condition could have arisen as far as I could see from the record of the cross-examination of the witness who was asked: "Did he not tell you that he was jogging around that area?" and the reply: "He did."

With regard to the second charge, the Magistrate considered the items mentioned in the charge could not be used for the purpose of housebreaking and again, he has applied his own standard in respect of these implements. He says:

"A garden scoop, a multi-purpose lunch set, a bottle opener fitted with knife and spike, to my mind would not be able to do the job of opening a window or door and would not come under the ambit of housebreaking implements."

I think the case which had been cited today, that is, the case of *R. v. Patterson*⁽¹⁾ shows that even a skeleton key, a picklock, shaped celluloid or linen covered over with treacle on it were capable of being used as housebreaking implements and so also an ordinary screwdriver.

Under the section which he was charged, that is, section 24(e) of the Minor Offences Enactment:

"Any person having in his possession without lawful excuse and the proof of which excuse, shall be on such person, any implement of housebreaking may be taken into custody."

The learned Magistrate found that these articles could not constitute housebreaking implements and therefore he had not asked the Respondent, according to that section, for his excuse for his possession of those articles at the time and the place in question.

However, the cases cited on behalf of the appellant, that is, *R. v. Patterson*⁽¹⁾ and *R. v. Percival Smith and Graham*⁽²⁾ are clear authorities that where articles are capable of being used for housebreaking purposes, they could constitute implements of housebreaking.

A In my view, a *prima facie* case has been made out against the Respondent in respect of the 1st and 2nd charges and accordingly, he should have been asked by the Magistrate to answer these 2 charges.

B It has also been submitted to me that the learned Magistrate had used the wrong standard when he says this in his judgment:

C "Having weighed the evidence, I find that the Prosecution has not proved this case beyond reasonable doubt and I therefore acquit and discharge the accused without calling for his defence."

and that he should have considered the provision of section 177(1) of the Criminal Procedure Code.

D A similar section in the Singapore Criminal Procedure Code has been considered in the case of *Haw Tua Tau v. Public Prosecutor* and in the judgment of Lord Diplock:

E "The crucial words in section 188(1) (and this refers to a similar section in the Singapore Criminal Procedure Code) are the words "if rebutted" which make the question that the court has to ask itself a purely hypothetical one. The prosecution makes out a case against the accused by adducing evidence of primary facts. It is to such evidence that the words "if rebutted" refer. What they mean is that for the purpose of reaching the decision called for by section 188(1) the court must act on the presumptions (a) that all such evidence of primary fact is true, unless it is inherently so incredible that no reasonable person would accept it as being true; and (b) that there will be nothing to displace those inferences as to further facts or to the state of mind of the accused which would reasonably be drawn from the primary facts in the absence of any further explanation. Whoever has the function of deciding facts on the trial of a criminal offence should keep an open mind about the veracity and accuracy of recollection of any individual witness, whether called for the prosecution or the defence, until after all the evidence to be tendered in the case on behalf of either side has been heard and it is possible to assess to what extent (if any) that witness' evidence has been confirmed, explained or contradicted by the evidence of other witnesses."

H The duty imposed upon the learned Magistrate is clear from that judgment, and in the present case he has only reached that first stage of the trial.

I A *prima facie* case had been made out against the Respondent in respect of the 1st and the 2nd charges and accordingly he should call upon the Respondent to answer them. This appeal is therefore allowed.

Appeal allowed.

Solicitors: *Susanna Lim & Co.*